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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO

LAURA ASHLY ESTRADA,  
  
Plaintiff,  
  
vs.  
  
ESTATE OF RITA MARIE GOEHNER,  
  
Defendant.

Case No.: CV 060512  
  
RULING AND ORDER DENYING  
DEFENDANT’S MOTION TO SET  
ASIDE JUDGMENT

**INTRODUCTION**

On the rain-soaked evening of April 2, 2006, decedent Rita Marie Goehner, a teenager, was involved in a fatal head-on automobile accident with plaintiff Laura Estrada, who was also a teenager at the time. For reasons never fully understood, Goehner abruptly turned her car across lanes of oncoming traffic directly into Estrada's car, killing Goehner and almost severing Estrada's right ankle. The car driven by Rita Goehner was owned and insured by her father, Timothy Goehner, who carried liability insurance on his daughter's behalf with Pacific Property and Casualty Company, located in Springfield, Missouri ("PPAC" or "Insurance Company").

After Estrada filed suit, it was answered by defense counsel retained by PPAC on behalf of Goehner’s father and an entity described as the Estate of Rita Marie Goehner ("Estate"). During the next two years, the parties conducted discovery, engaged in a

1 private settlement session with an experienced mediator, and prepared for trial. Liability  
2 against the Estate was eventually conceded, and the case against Goehner's father was  
3 dismissed prior to trial. After hearing extensive evidence over the course of a two-week  
4 trial, the jury rendered a verdict in Estrada's favor against the Estate.

5 In the name of the Estate, PPAC now moves to set aside the \$1,680,325.59  
6 judgment as being void for lack of jurisdiction. PPAC claims that the two years of  
7 Superior Court proceedings are of no effect because the Estate was never formally  
8 established under the Probate Code, and therefore never existed as a legally cognizable  
9 entity capable of being sued. PPAC also asserts that the Court never had jurisdiction  
10 over it because the Insurance Company was never properly served with a summons.

11 The basic premises for PPAC's motion are flawed. First, plaintiff was not  
12 proceeding as a creditor against a "nonexistent entity" in formal probate proceedings.  
13 Therefore, the provisions of Probate Code §§ 8000 et seq. (concerning the  
14 administration of decedent's estates) are inapplicable. Rather, as specifically authorized  
15 by Probate Code §§ 550-554, plaintiff was proceeding in ordinary civil litigation *against*  
16 *the insurance company and the insurance proceeds* in the name of the estate. Under  
17 Probate Code §§ 550-554, the insurance company, sued in the name of the Estate, is the  
18 "legal person" capable of being sued and that was actually sued here.

19 Second, whether PPAC was ever served with process is irrelevant. By filing an  
20 answer on behalf of the Estate and then participating in the case through counsel, PPAC  
21 waived any potential defects in service of process. Not only did PPAC's counsel  
22 immediately file an answer to the complaint on behalf of the Estate (as specifically  
23 contemplated by the Probate Code), but PPAC representatives fully participated in the  
24 Superior Court proceedings on behalf of the Estate from start to finish. All of the  
25 procedural safeguards concerning notice required by the Probate Code have been  
26 satisfied, and no possible unfairness to PPAC has been identified.

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1 Third, by virtue of its counsel's conduct, PPAC has consented to this Court's  
2 jurisdiction and is estopped by operation of law from complaining about any irregularity  
3 in the judgment. PPAC's counsel appeared in the name of the Estate for two years in  
4 Superior Court proceedings. He repeatedly gave the trial judge, the probate department,  
5 and plaintiff's counsel the unmistakable impression that the Insurance Company had  
6 already appeared in the case, that it was actually in control of decision-making, and that  
7 establishment of a formal estate was both unnecessary and potentially very harmful to  
8 the emotional welfare of decedent's parents. It would subvert the administration of  
9 justice to allow PPAC to void the judgment based upon a legal argument that, whatever  
10 its merits, should have been raised long ago.

11 Fourth, by virtue of its counsel's conduct, PPAC prejudicially misled plaintiff's  
12 counsel into believing that he spoke for PPAC and that it would be unnecessary and  
13 harmful for plaintiff to persist in establishing a formal estate. Adopting the position now  
14 being espoused by PPAC and its counsel would lead to grossly inequitable results.  
15 PPAC is estopped by the actions of its counsel from obtaining the benefits of its  
16 misconduct.

17 The so-called irregularities claimed by PPAC are trivial. PPAC received a full  
18 and fair hearing before the jury. Although the jury ultimately adopted a valuation of the  
19 case very different from PPAC's adjusters, the jury's verdict was reasonable and credible  
20 based on the evidence presented. This motion--a quintessential sandbag-- should never  
21 have been filed.

## 22 **FACTUAL AND PROCEDURAL HISTORY**

23 Following the tragic accident, PPAC was immediately advised of the legal claim  
24 by Estrada. As early as April 20, 2006 (even before a case was filed), plaintiff's counsel  
25 was contacted by Thomas Kish, a senior claims representative for PPAC, who engaged  
26 in brisk correspondence with plaintiff's counsel regarding multiple issues, including  
27 mitigation of damages, identity of treating physicians, exchanging photographs of  
28 injuries and investigative reports, and limits of coverage.

1           On June 16, 2006, Estrada filed suit, which was soon answered by PPAC's  
2 defense attorney on behalf of Goehner's father, as well as an entity described by defense  
3 counsel as the "Estate of Rita Marie Goehner". With the amount of insurance proceeds  
4 available (\$1,250,000), and defense counsel's perception of the value of the case,  
5 defense counsel asserted that creating a formal estate was unnecessary. Conversely,  
6 plaintiff's counsel was reluctant to waive any rights against the estate or its insurer.  
7 These negotiations went on for some time.

8           By way of example, on July 19, 2006 defense counsel (copying adjuster Robert  
9 Desmuke of PPAC), stated in writing that plaintiff was required to file a petition  
10 pursuant to a particular probate code section limiting her claim to the available insurance  
11 proceeds. On July 21, 2006, plaintiff's counsel responded that election to proceed under  
12 Probate Code § 550 would automatically limit recovery to the proceeds of the insurance  
13 policy, but that, to exceed policy limits, a claim would have to be filed against the estate.  
14 On July 31, 2006, defense counsel agreed that plaintiff's conclusion was "correct," and  
15 he asked for a written commitment from plaintiff's counsel that the plaintiff's claim  
16 would be limited to the insurance policy proceeds. On August 14, 2006, plaintiff's  
17 counsel responded that plaintiff was unwilling to waive any potential claims against the  
18 estate until further discovery was completed. All told, the discussions about the  
19 necessity of establishing a formal probate estate continued for the better part of one year.

20           On March 29, 2007, shortly before the one-year statute of limitation for claims  
21 against the formal estate was to expire under Code of Civil Procedure § 366.2, plaintiff  
22 applied *ex parte* to establish an involuntary, formal probate estate for Rita Goehner. In  
23 an opposition pleading submitted and filed on behalf of Mr. and Mrs. Goehner, as well  
24 as an entity denominated the "Estate of Rita Marie Goehner," defense counsel  
25 vehemently opposed the petition, claiming that an estate was unnecessary given the  
26 policy limits available:

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1 The decedent was insured by liability policies with  
2 \$1,250,000 in combined coverage. In addition, decedent  
3 was a 16-year-old minor with no assets. Creation of an  
4 estate, and the naming of petitioner as Special  
5 Administrator of the estate, would only serve to cause  
6 additional distress and emotional trauma to the loving  
7 parents of decedent who tragically lost their only child. It  
8 is their position that the filing of this petition is nothing  
9 more than a cold-hearted attempt to inflict emotional  
distress and trauma upon Mr. and Mrs. Goehner such that  
they in turn pressure their insurance carrier to pay any  
exorbitant amount to settle petitioner's claim and thereby  
end this unfortunate chapter in their lives. . . .

10 Despite the claims which may be asserted by the petitioner,  
11 denial of the petition for letter of special administration will  
12 not result in prejudice. Decedent had no assets at the time  
13 of her death. Moreover, insurance policies with aggregate  
14 coverage of \$1,250,000 are available to cover any  
15 settlements or verdicts against decedent by petitioner. *See*  
16 *Opposition to Ex Parte Petition for Letters of Special*  
17 *Administration*, filed April 2, 2007, at 3, 5 and 6.

18 While these lengthy negotiations were ongoing, the parties simultaneously  
19 conducted considerable discovery, engaged in a private settlement sessions with an  
20 experienced mediator, and continued preparations for trial. In November 2007, as the  
21 first trial date approached, counsel jointly approached the Court and asked for a  
22 postponement to pursue further settlement options. This request was granted. By  
23 agreement of the parties, the Court had a telephone conversation with adjuster Desmuke  
24 of PPAC regarding a final effort to resolve the case. Desmuke represented to the court  
25 that he had the authority to settle the case against the Estate. No settlement was reached.

26 On February 13, 2008, a jury was selected. After hearing extensive evidence  
27 over the course of a two-week trial, the jury rendered a verdict in Estrada's favor and  
28 against the Estate of Rita Marie Goehner in the amount of \$1,680,325.59.

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1 On June 3, 2008, the Court denied the Estate's motion for a new trial based upon  
2 the sufficiency of the evidence, concluding that "plaintiff's ankle was very seriously  
3 injured in the car accident," that "[p]laintiff's injuries are debilitating and likely to  
4 worsen significantly over time," and that "plaintiff's evidence with respect to lost  
5 earning capacity was credible."

6 On May 22, 2008, defendant moved to set aside the entire judgment, contending  
7 that plaintiff had failed to invoke the procedures required by the Probate Code.

8 On July 22, 2008, believing that both the Estate's trial counsel and adjuster  
9 Desmuke were relevant witnesses on the subject of PPAC's participation in the  
10 litigation, and its ratification and control of counsel's actions, the Court concluded that  
11 both individuals should be summoned to appear as witnesses and provide evidence on  
12 the estoppel issues. However, PPAC fought attempts to obtain the testimony of  
13 Desmuke and trial counsel by objecting to the Court's ruling and moving to quash the  
14 subpoenas that had been issued by plaintiff's counsel.

15 On September 12, 2008, the parties agreed that the matter would be submitted on  
16 the state of the current evidence and that the subpoenas would be withdrawn.  
17 Thereafter, the matter was taken under submission.<sup>1</sup>

## 18 DISCUSSION

### 19 Establishment of a Formal Estate under the Probate Code Was Unnecessary

20 PPAC asserts that the judgment is void because the Estate of Rita Goehner was  
21 never properly established, and therefore never existed as a legally cognizable party.  
22 Defendant relies upon *Omega Video Inc. v. Superior Court* (1983) 146 Cal.App.3d 470,  
23 477, and *Oliver v Swiss Club Tell* (1963) 222 Cal.App.2d 528, 537, for the proposition  
24 that "[a] nonexistent entity may not be effectively served with summons as a named  
25 defendant and may not be subjected to jurisdiction of a court by an entry of a general  
26 appearance on its behalf."

27 Under California law, a formal probate estate is not recognized as a legal entity  
28 but rather as a collection of assets and liabilities. The estate itself has no capacity to be

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<sup>1</sup> On September 8, 2008, shortly before the matter was taken under submission, a formal probate estate was finally established for Rita Goehner. See Probate File PR 070109.

1 sued or to defend an action. Therefore, PPAC contends that litigation by a plaintiff must  
2 be maintained against the executor or administrator of the estate, who is appointed when  
3 a formal probate is established under the provisions of Probate Code §§ 8000 et seq. *See*  
4 *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1344; *Tanner v. Best* (1940) 40  
5 Cal.App.2d 442, 445.

6 However, where a decedent is *protected by insurance*, “an action to establish the  
7 decedent's liability . . . may be commenced or continued . . . without the need to join as a  
8 party the decedent's personal representative or successor in interest.” Probate Code §  
9 550(a). In cases where insurance coverage is present, the plaintiff must name the Estate  
10 as a nominal party and serve the summons on the insurer or its designated  
11 representative, which is by all accounts the real-party-in-interest. Probate Code §  
12 552(a). The insurer may thereafter “deny or otherwise contest its liability” in the case.  
13 *Id.* In short, the statutory scheme contemplates a direct action against the insurance  
14 company that is brought in the name of the decedent's estate. Ordinarily, the damages in  
15 an action sought under these provisions are within the limits of insurance or damages  
16 outside the limits are automatically waived. Probate Code § 554. *See generally* Weil &  
17 Brown, *Civil Procedure Before Trial* (Rutter Group 2008) §§ 2:126, 2:127.

18 In this case, plaintiff chose to proceed in ordinary civil litigation against the  
19 Insurance Company and the insurance proceeds in the name of the Estate under Probate  
20 Code §§ 550-554. It was simply unnecessary to establish a formal probate estate.  
21 Plaintiff followed the correct procedure.<sup>2</sup>

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25 <sup>2</sup> PPAC relatedly claims that the judgment against it is a nullity because plaintiff did not agree to  
26 limit her recovery to the amount of policy limits as required by Probate Code § 554 (a). Plaintiff was  
27 under no obligation to agree to limit her damages in such a manner. When a plaintiff utilizes the  
28 procedures of a direct action against the insurance company, recovered damages are typically confined to  
the limits of insurance coverage as a matter of law. Probate Code § 554(a). However, filing a direct  
action against the insurance company does *not* automatically eliminate claims against the estate in formal  
probate. Probate Code § 553. To the contrary, the Probate Code recognizes that a direct action against the  
insurance company can be *consolidated* with a formal claim in probate against the estate. *See* Probate  
Code §§ 550(b) and 552(c).

1       **By Answering the Complaint on Behalf of The Estate of Rita Goehner, PPAC**  
2       **Appeared in the Case and Forfeited Its Right to Object to Any Defect in Service of**  
3       **Process**

4       PPAC next claims that the judgment is void because plaintiff failed to serve the  
5       summons upon it or a designated representative under the provisions of Probate Code §  
6       552 (a), which authorize a direct action against the insurance company. However, any  
7       objections to defects in service of process in a civil action are forfeited by a party's  
8       general appearance, which includes filing an answer on the merits (Code Civ. Proc. §  
9       1014; *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 352) or  
10      contesting the merits of the case. *366-386 Geary St., L.P. v. Superior Court* (1990) 219  
11      Cal.App.3d 1186, 1193-1194. PPAC *both* entered an appearance *and* contested the  
12      merits of the case.

13      On July 21, 2006, defense counsel entered an appearance, filed an answer, and  
14      demanded a jury trial on behalf of both Timothy Goehner and the Estate of Rita  
15      Goehner, as specifically contemplated by sections 550(a) and 552(a) of Probate Code §  
16      550(a). The answer filed by defense counsel on behalf the "Estate of Rita Goehner" was  
17      clearly designed to expedite PPAC's appearance as the real-party-in-interest in the  
18      manner specifically authorized by Probate Code §§ 550-554. To claim otherwise, as  
19      PPAC attempts to do through the declaration of adjuster Robert Desmuke, is  
20      disingenuous.<sup>3</sup>

21      Further, PPAC was immediately aware of the legal claim by Estrada, and its  
22      representatives fully and aggressively participated in the Superior Court proceedings  
23      from start to finish. As the Court of Appeal stated in *Fireman's Fund Ins. Co. v. Sparks*  
24      *Const., Inc.* (2004) 114 Cal.App.4th 1135, 1147-1149 (citations omitted):

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26      <sup>3</sup> The Court was invited by defense counsel to give adjuster Desmuke's declaration "whatever  
27      weight it's entitled." The Court gives no weight to this declaration. While it may be *literally true* that  
28      adjuster Desmuke never waived the technical service requirements of Probate Code § 552 (a) and never  
    authorized anyone to waive those particular requirements on PPAC's behalf, this Court *flatly rejects* any  
    suggestion or implication from Desmuke's declaration that PPAC never appeared in the case, did not  
    control litigation strategy, or has in any way been prejudiced in defending this matter. As discussed more  
    fully herein, the evidence shows otherwise.

1 A defendant who has actual knowledge of the action and  
2 who has submitted to the authority of the court should not  
3 be able to assert a violation of rules which exist only to  
4 bring about such knowledge and submission. We therefore  
5 hold that a defendant who makes a general appearance  
6 forfeits any objection to defective service, even when the  
7 defendant does not know at the time that such an objection  
8 is available.

9 For much the same reasons, the rule that a person can  
10 become a defendant by answering the complaint is a matter  
11 of forfeiture, not waiver. Just as a summons serves as  
12 notice of the action, “[t]he complaint ... serves to frame and  
13 limit the issues and to apprise the defendant of the basis  
14 upon which the plaintiff is seeking recovery.” If a  
15 defendant knows the factual and legal issues well enough to  
16 file an answer, these purposes have been served.

17 PPAC had actual knowledge of the case, appeared in the name of the Estate as a  
18 party, and fully participated in the strategic decisions that were made. By doing so it  
19 fully and freely submitted to the authority of the Court. A violation of service of process  
20 rules cannot be asserted. *Fireman's Fund*, 114 Cal.App.4th at 1149.

21 **PPAC Is Estopped from Asserting That the Jury's Award Exceeds the Court's**  
22 **Jurisdiction**

23 When a court has jurisdiction of the subject matter, a party who seeks or  
24 consents to action beyond the court's power as defined by statute or decisional rule may  
25 be estopped to complain of the ensuing action in excess of jurisdiction. *In re*  
26 *Griffin* (1967) 67 Cal.2d 343, 347; *Rogers v Hirschi* (1983) 141 Cal.App.3d 847; *Gee v.*  
27 *American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1414;  
28 *Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, 92. Whether jurisdictional  
estoppel arises depends on the importance of the irregularity not only to the parties but  
to the functioning of the courts and, in some instances, on other considerations of public  
policy. *In re Griffin*, 67 Cal.2d at 347.

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1 A litigant who has stipulated to a procedure in excess of jurisdiction may be  
2 estopped to question it when ‘To hold otherwise would permit the parties to trifle with  
3 the courts.’ *Id.* (internal citation omitted). On the other hand, waiver of procedural  
4 requirements may not be permitted when the allowance of a deviation would lead to  
5 confusion in the processing of other cases by other litigants. Substantive rules based on  
6 public policy sometimes control the allowance or disallowance of jurisdictional  
7 estoppel. *Id.*

8 *Rogers v Hirschi* (1983) 141 Cal.App.3d 847, illustrates the operation of  
9 jurisdictional estoppel in the context of a probate matter. There, a formal estate had  
10 been opened and an executor had been appointed. Rather than filing a creditor’s claim  
11 against the estate, plaintiff filed a civil action and procured a judgment in excess of the  
12 available policy limits, which the insurer paid. Only after the insurer had paid the  
13 proceeds did the executor finally move to set aside the judgment as being in excess of  
14 the policy limits and therefore void for failure to timely file a creditor’s claim. The trial  
15 court agreed and lowered the amount of the judgment. The appellate court reversed,  
16 reasoning that the estate’s failure to assert the lack of a creditor’s claim at any time until  
17 after the entry of final judgment resulted in a jurisdictional estoppel. It further held that,  
18 because the trial court had jurisdiction of the subject matter and the parties, the judgment  
19 exceeding policy limits was only in excess (rather than in absence) of its jurisdiction and  
20 could not later be challenged. *Rogers v. Hirschi* 141 Cal.App.3d 847. *See Heywood v.*  
21 *Mun.Ct. (Urquhart Family Trust)* (1988) 198 Cal.App.3d 1438, 1444-1445.

22 A clearer case of jurisdictional estoppel is hard to imagine. At no time in *any* of  
23 the pretrial proceedings did defense counsel raise *any* question as to the Court’s  
24 jurisdiction over PPAC, the Estate, or procedural irregularities under Probate Code §§  
25 550-554. PPAC should have raised these procedural matters in its answer. However,  
26 not one of defendants’ 17 affirmative defenses addressed plaintiff’s alleged failure to  
27 serve the insurance company with a copy of the complaint and summons, or plaintiff’s  
28 wrongful naming of the Estate as a party.

1           Moreover, plaintiff and her counsel were given every reason to believe that  
2 defense counsel spoke on behalf of the Insurance Company. Defense counsel went to  
3 considerable measures in order to persuade plaintiff's counsel that establishment of a  
4 formal estate was not only unnecessary, that it would cause substantial emotional  
5 distress to the Goehner family, and that very substantial insurance proceeds were  
6 available to cover any settlements or verdicts. When plaintiff applied *ex parte* to  
7 establish such an estate, defense counsel vehemently opposed the petition, claiming that  
8 "[t]he decedent was insured by liability policies with \$1,250,000 in combined coverage"  
9 which were "available to cover any settlements or verdicts against decedent by  
10 petitioner." See Opposition to Ex Parte Petition for Letters of Special Administration,  
11 filed April 2, 2007, at 3, 5 and 6 (emphasis added).

12           Further, defense counsel has consistently told the trial court, the probate  
13 department, and the jury that he represented the Estate of Rita Marie Goehner. To this  
14 very day, the pleadings filed by defense counsel are represented to be filed on behalf of  
15 Rita Goehner's Estate. If, as claimed, the Estate has never existed, the Court must ask  
16 itself: "For whom was defense counsel speaking when he answered for the Estate? For  
17 whom has he been speaking during the past two years? For whom does defense counsel  
18 now speak?" The irrefutable conclusion is that defense counsel has been speaking for,  
19 and now speaks on behalf of PPAC, sued in the name of the Estate under Probate Code  
20 §§ 550-554.

21           During the pendency of this motion, the Court has become deeply concerned that  
22 PPAC, the Estate, and defense counsel are "trifling with the courts." It was for this  
23 reason that the Court concluded that trial counsel and adjuster Desmuke should be  
24 summoned to appear as witnesses and provide evidence on the estoppel issues. Strongly  
25 suspecting that, if called as witnesses, both trial counsel and adjuster Desmuke would  
26 have readily confirmed that all of the actions undertaken by trial counsel on behalf of the  
27 Estate were with the full knowledge, participation, ratification and control of PPAC, the  
28 Court tentatively ruled that subject to attorney-client and work product privileges, trial

1 counsel should appear as a witness and provide evidence on the estoppel issues.

2 Although the parties eventually agreed to submit the matter without the benefit of this  
3 evidence, the Court's concerns have not abated.

4 Relevant questions include whether Desmuke (and/or others at PPAC)  
5 authorized defense counsel's appearance, whether they paid defense counsel's fees,  
6 whether they participated in the development of strategy, and/or whether they controlled  
7 the settlement strings. Adjuster Desmuke's perfunctory declaration skirts these  
8 important questions. Whether Desmuke himself ever waived the technical service  
9 requirements of Probate Code § 552 (a) is beside the point. Nor is it significant whether  
10 he authorized anyone to waive those particular requirements on PPAC's behalf.

11 Putting aside possible testimony of trial counsel and Desmuke, the evidence  
12 already before the Court clearly proves that PPAC was fully aware of the claims against  
13 it, that PPAC authorized its appearance in the name of the Estate, that PPAC controlled  
14 the settlement strings on behalf of the entity denominated in court papers as "the Estate  
15 of Rita Marie Goehner," and that PPAC was fully aware of and ratified all of the  
16 important actions taken by defense counsel.

17 In assessing whether jurisdictional estoppel applies, this Court has also balanced  
18 public policy considerations, which weigh heavily in favor of finding an estoppel.  
19 Enforcement of this judgment against the insurance proceeds would cause no prejudice  
20 whatsoever to PPAC. Not only did the Insurance Company appear in the case through  
21 counsel on behalf of the nominal estate for over two years, but its adjusters were fully  
22 aware of the litigation and actively participated in the case from start to finish. It is  
23 readily apparent that PPAC's adjusters closely supervised defense counsel's work and  
24 exercised ultimate authority over all potential settlements. All of the procedural  
25 safeguards concerning notice required by the Probate Code have been satisfied here.

26 On the other hand, there would be considerable prejudice to the judicial system if  
27 this judgment were held to be void. An entire litigation has gone forward to completion.  
28 Court resources and taxpayer dollars have been expended for two years on this case. If

1 PPAC's motion is successful, the matter will have to be started all over again. This  
2 would be a decidedly wasteful exercise because, as this Court has stated on several  
3 occasions, PPAC and the Estate had a full and fair hearing before the jury. Moreover,  
4 the jury's verdict was reasonable and credible based on the evidence presented.

5 Finally, voiding the judgment would be extremely unfair and prejudicial to the  
6 seriously-injured plaintiff. Not only has she been put through the emotional tribulations  
7 and expenses of a trial as well as the inevitable delays occasioned by a tort case working  
8 its way through the judicial system, but plaintiff currently has no funds to pay for  
9 necessary medical expenses and now faces additional delays as this unfounded motion  
10 winds its way through the judicial system.

11 PPAC waited years to raise the alleged jurisdictional defect, even though it had  
12 multiple opportunities for doing so at much earlier stages of the case, which would have  
13 avoided enormously wasteful and expensive litigation. To embrace PPAC's argument  
14 'would permit the parties to trifle with the courts' and would contravene important  
15 public policy regarding finality and fairness in the legal system. *In re Griffin*, 67 Cal.2d  
16 at 347. This Court will certainly not embrace such a result.

17 **PPAC is Equitably Estopped from Raising Plaintiff's Failure to Serve the**  
18 **Summons As Well As Her Failure to Establish a Formal Probate Estate**

19 The doctrine of equitable estoppel is founded on concepts of equity and fair  
20 dealing. *Aerojet-General Corp. v. Commercial Union Ins. Co.* (2007) 155 Cal.App.4th  
21 132, 147. Now codified in the Evidence Code, the doctrine is based on the sensible  
22 notion that a party who prejudicially misleads another should be estopped from  
23 obtaining the benefits of its misconduct. Evidence Code §623; *Stillwell v. Salvation*  
24 *Army* (2008) 167 Cal.App.4th 360, 379; *Cotta v. City and County of San Francisco*  
25 (2007) 157 Cal.App.4th 1550, 1567. Under equitable estoppel principles, "one may not  
26 lull a party into inaction by words or deeds that lead to a false sense of security."

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1 *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165  
2 Cal.App.4th 1568, 1585 (citations omitted); *Feduniak v. California Coastal Com'n*  
3 (2007) 148 Cal.App.4th 1346, 1359.

4 The facts supporting jurisdictional estoppel also support equitable estoppel. To  
5 briefly restate the matter, defense counsel indicated time after time, by spoken and  
6 written word and by his actions, that he possessed authority to act on behalf of PPAC as  
7 the nominal Estate under Probate Code §§ 550-554. Not until the filing of this motion  
8 did defense counsel intimate that the Estate he purportedly represented for over two  
9 years did not rightfully exist or that it had been improperly named as a party. Nor did  
10 defense counsel ever indicate that any judgment obtained by the plaintiff would be void  
11 in its entirety as now asserted. To the contrary, plaintiff was given repeated assurances  
12 that insurance policies with aggregate coverage of \$1,250,000 would cover any  
13 settlements or verdicts against decedent.

14 The overall statements and actions of defense counsel deceptively lulled  
15 plaintiff's counsel by words and actions into a false sense of security. *Pelton-Shepherd*  
16 *Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1585  
17 (citations omitted); *Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346,  
18 1359. His actions prejudicially misled plaintiff's counsel into believing that he spoke for  
19 PPAC and that it would be unnecessary and harmful for plaintiff to persist in  
20 establishing a formal estate. Adopting the position now being espoused by PPAC and  
21 defense counsel would lead to grossly unfair results. *Aerojet-General Corp. v.*  
22 *Commercial Union Ins. Co.* (2007) 155 Cal.App.4th 132, 147. <sup>4</sup>

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25 <sup>4</sup> For similar reasons, PPAC has not overcome the rebuttable presumption that defense counsel  
26 had authority to appear for the insurance company in the name of the Estate under Probate Code § 552(a).  
27 See *Omega Video* 146 Cal.App.3d at 476-477 (defendant for whom general appearance has been entered  
28 may withdraw only by factually overcoming rebuttable presumption that attorney has authority to appear  
for the person for whom he professes to act). Not only did defense counsel file an answer on behalf of the  
Estate but, he repeatedly gave indications that he spoke for the insurance company. As stated, adjuster  
Desmuke's declaration discusses only one narrow point with respect to service of process under a  
particular provision of the Probate Code; it does not address the larger, more important question regarding  
defense counsel's authority to appear or defend the case of behalf of PPAC.

1 **CONCLUSION**

2 Having supervised pretrial proceedings and presided over trial, this motion is  
3 indeed disturbing. With public regard for the legal profession seriously in need of  
4 improvement,<sup>5</sup> it is vital that attorneys advocate positions not only supported by credible  
5 arguments under the law, but also by notions of justice and fair dealing. This motion  
6 falls far short of the mark on both accounts.

7 PPAC's position is legally and factually unsupported. Moreover, its moving  
8 papers take no account whatsoever of the time and effort that the judicial system has  
9 already devoted to fairly resolving its case, the extreme unfairness to the seriously-  
10 injured plaintiff that would result from voiding the judgment, the insurance company's  
11 unexplained delay in springing its procedural trap, or the disservice to the fair  
12 administration of justice that would be occasioned by adopting PPAC's legal position  
13 and starting all over again. Fortunately, the law is founded upon reason and common  
14 sense, and it does not countenance such a result. Defendant's motion is DENIED.

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16 DATED: November 7, 2008

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18 CHARLES S. CRANDALL  
19 Judge of the Superior Court

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26 <sup>5</sup> See, e.g., Amy E. Black and Stanley Rothman, Shall We Kill All the Lawyers First: Insider and  
27 Outsider Views of the Legal Profession, 21 Harv. J. L. & Pub. Pol'y, 835, 850 (1998); Gary A. Hengstler,  
28 Vox Populi: The Public Perception of Lawyers: ABA Poll, 79 A.B.A.J. 60 (September 1993); ABA  
Perceptions of the U.S. Justice System (1999); Texas Bar Journal Research and Analysis: Public Trust and  
Confidence in the Texas Court and Legal Profession, March, 1999, 62 Tex. B. J., 289, 290.